GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

P.S. – Commercial Taxes Department - Report of Vigilance and Enforcement – Certain irregularities noticed in issuing irregular refunds granted in the case of M/s. K.L.Sreedhar Reddy, Works Contactors, Nellore – Preliminary enquiry - Conducted – Certain Irregularities noticed - Initiation of departmental action against Sri J.V.M.Sharma, the then AC (CT), Nellore, now working as DC (CT), O/o CCT, AP, Vijayawada – Under Rule 20 of A.P.C.S.(CC&A) Rules, 1991 – Articles of charges – Issued.

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REVENUE (VIGILANCE-II) DEPARTMENT

G.O.Rt.No.889 **Dated:21-06-2018**

Read the following:

1. From Director General (V&E) & E.O. Prl.Secy to Govt., Report No.13 (C.No.1596/V&E/R1/2013, dt:30.01.2014).
2. From CCT's Ref.No.V1/110/2014, dt:26.04.2018.
3. G.O.Ms.No.323, Rev (Vig.II) Dept., dt.21-06-2018.

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ORDER:

In pursuance of the sanction accorded in the G.O., 3rd read above, it is proposed to hold an inquiry against Sri J.V.M.Sharma, the then Assistant Commissioner (Commercial Taxes), Nellore, now working as Deputy Commissioner (Commercial Taxes), O/o Commissioner of Commercial Taxes, Andhra Pradesh, Vijayawada in accordance with the procedure laid down in Rule-20 of the Andhra Pradesh Civil Services (Classification, Control & Appeal) Rules, 1991.

2. The substance of the imputations of misconduct or misbehavior in respect of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge (Annexure –I). A statement of imputations of misbehavior in support of the article is also enclosed as Annexure-II. A list of documents by which and a list of witnesses by whom the articles of charges are proposed to be sustained is also enclosed in Annexure-III & IV.

3. Sri J.V.M.Sharma, the then Assistant Commissioner (Commercial Taxes), Nellore, now working as Deputy Commissioner (Commercial Taxes), O/o. Commissioner of Commercial Taxes, Andhra Pradesh, Vijayawada is directed to submit his explanation within 10 days from the receipt of this order i.e., written statement of defence and to state whether he desires to be heard in person.

4. Sri J.V.M.Sharma, the then Assistant Commissioner (Commercial Taxes), Nellore, now working as Deputy Commissioner (Commercial Taxes), O/o. the Commissioner of Commercial Taxes, Andhra Pradesh, Vijayawada is informed that an inquiry will be held only in respect of those articles of charges which are not admitted, thus he should specifically admit or deny each article of charge.

5. Sri J.V.M.Sharma, the then Assistant Commissioner (Commercial Taxes), Nellore, now working as Deputy Commissioner (Commercial Taxes), O/o. the Commissioner of Commercial Taxes, Andhra Pradesh, Vijayawada is further informed that if he does not submit his written statement of defence on or before the time specified in para 3- above, further action will be processed based on the material available.

6. Attention of Sri J.V.M.Sharma, the then Assistant Commissioner (Commercial Taxes), Nellore, now working as Deputy Commissioner (Commercial Taxes), O/o. the Commissioner of Commercial Taxes, Andhra Pradesh, Vijayawada is invited to Rule 24 of Andhra Pradesh Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his

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service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Sri J.V.M.Sharma, the then Assistant Commissioner (Commercial Taxes), Nellore, now working as Deputy Commissioner (Commercial Taxes), O/o. the Commissioner of Commercial Taxes, Andhra Pradesh, Vijayawada is aware of such representation and that it has been made at his instance and action will be taken against him for violation of Rule 24 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964.

7. The receipt of this order may be acknowledged forthwith.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr.MANMOHAN SINGH
SPECIAL CHIEF SECRETARY TO GOVERNMENT (CT, EXCISE & R&S) (FAC)

To
Sri J.V.M.Sharma, the then Assistant Commissioner (Commercial Taxes), Nellore, now working as Deputy Commissioner (Commercial Taxes), O/o. the Commissioner of Commercial Taxes, Andhra Pradesh, Vijayawada (**through** the Commissioner of Commercial Taxes, Andhra Pradesh, Eedupugallu, Vijayawada).

Copy to:

The Commissioner of Commercial Taxes, Andhra Pradesh, Eedupugallu, Vijayawada.
The Secretary to Vigilance Commissioner, Andhra Pradesh Vigilance Commission, Velagapudi.
The Revenue (commercial Tax-I) Department.
SF/SC

//FORWARDED: BY ORDER//

SECTION OFFICER

ANNEXURE-I

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SRI J.V.M. SARMA THE THEN ASSISTANT COMMISSIONER, NELLORE AND PRESENTLY DEPUTY COMMISSIONER (CT) OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES, ANDHRA PRADESH, VIJAYAWADA

ARTICLE OF CHARGE:

That the said Sri J.V.M. Sarma, the then Assistant Commissioner(Commercial Taxes), Nellore and Presently Deputy Commissioner(Commercial Taxes), O/o the Commissioner(Commercial Taxes), Andhra Pradesh, Vijayawada committed grave irregularities in granting the refund of taxes of Rs 2,12,27,190/- in respect of M/s K.L. Sreedhar Reddy, Works Contractors, Nellore i.e. works contractor dealer, for the period from 2005-06 to 2008-09 without giving due regards to the provisions under section 22(3) and rule 18 (3)(b) and other relevant provisions of the A.P.VAT 2005, G.O.Ms.No.94 Irrigation and CAD (PW-COD) Department dated 01.07.2003, and failed to exercise due diligence in granting the said refund of tax, causing loss to the public exchequer and correspondingly allowing undue enrichment to an extent of Rs.2,12,27,190/-, to the dealer. Thus it is a clear case of dereliction to duty, willful negligence and criminal misconduct on the part of the said officer.

Thus, Sri J.V.M. Sarma, the then Assistant Commissioner(Commercial Taxes), Nellore and Presently Deputy Commissioner(Commercial Taxes), O/o the Commissioner(Commercial Taxes), Andhra Pradesh, Vijayawada by his above mentioned acts, exhibited, indiscipline, lack of integrity, devotion to duty, conduct unbecoming of a Government Servant in violation of the provisions under rule 3(1) and (2) of Andhra Pradesh Civil Services (conduct) Rules, 1964.

Dr.MANMOHAN SINGH
SPECIAL CHIEF SECRETARY TO GOVERNMENT (CT, EXCISE & R&S) (FAC)

SECTION OFFICER

ANNEXURE – II

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLE OF CHARGE FRAMED AGAINST SRI J.V.M.SARMA, FORMERLY ASSSISTNT COMMISSIONER OF COMMERCIAL TAXES, NELLORE DIVISION AND PRESENTLY WORKING AS DEPUTY COMMISSIONER, COMMERCIAL TAXES, OFFICE OF THE COMMISSIONER (CT), A.P., VIJAYAWADA.

It has been brought to the notice of the undersigned by the Director General & E.O. Principal Secretary to Government, General Administration (Vigilance & Enforcement) Department that an enquiry was conducted based on the allegations relating to illegal refund of taxes by Sri J.V.M.Sarma, the then Assistant Commissioner of Commercial Taxes, Nellore division now working as Deputy Commissioner of Commercial Taxes, O/o the Commissioner (Commercial Taxes), Andhra Pradesh, Vijayawada to the work contractors i.e., M/s. K.L.Sreedhar Reddy Works Contractors, Nellore who is a works contractor dealer. The enquiry report furnished by the Director General & E.O., Principal Secretary to Government, General Administration (Vigilance and Enforcement) Department reveals that the amount of tax collected at source (TCS), which was added separately over and above the consideration for the execution of work, payable by the contractee was unlawfully refunded. In the instant case, the contractee is a Government contractor i.e., M/s. K.L.Sreedhar Reddy Works Contractors, Nellore and the estimates procured from the Irrigation Department clearly shows that the amount of tax was separately added to the consideration for execution of works and the same tax, when found to be in excess of the tax liability of the dealer ought to have been fortified as per the AP VAT Rules, but was refunded without going into the full facts of the case.

It is clear case of dereliction of duty, willful act of negligence and criminal misconduct on the part of the said officer, and the details of the case are as under:

The inclusion case of tax component in the estimates as per the G.O.Ms.No.94, Dt.01-07-2003 of Irrigation & CAD (PW-COD) Department the following provisions is permitted to be added in the estimate.

i) Tax at the rate of 2% for items relating to canal digging, lining, repairing road works etc., where the earth work excavation and embankment is involved and for works other than the above, tax at 4% shall be added in the data, and has permitted addition of tax in the estimates various Engineering Departments are including the tax components in the estimate in following methods.

Method I: Suitable tax component is added in the Data to arrive total estimate cost. In this case tax component will be included in the E.C.V. (Estimate Contract Value) put to tender.

Method II: Suitable tax component is added in the General Abstract Data on the estimate cost. In this case tax component will not become part of E.C.V. (Estimate Contract Value) put to tender.

As per the EPC guidelines, the estimates prepared by the contractor shall be deemed to be inclusive of taxes and duties on all the materials that the contractor has to purchase for performance of the contract. Accordingly the Input Tax paid by the contractor on his inputs is also being provide by the Contractee i.e., Government Andhra Pradesh so the contractor is not entitled to claim Input Tax Credit also.

As per the Sales Tax Act provisions, the contractor has to pay tax when the work is executed and transferred to the contractee for payment.

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This burden is also borne by the Contractee i.e., Government of Andhra Pradesh up on finalization of estimates, the Contractee (Government) making provision for work contract tax i.e., either 4 % or 2.8% based on the nature of contract over the Estimated Contract Value (EC), regardless whether the goods involved in works are taxable or not.

The Contractee i.e., Government of Andhra Pradesh being a tax levying and collecting authority, made that tax provision (TCS) in the Government works to comply is own statue (AP VACT ACT – 2005) and collecting it back in the form of book adjustment when payments are made to the contractors.

Further, having thought that there were possibilities for unjust enrichment to the contractors, the Government carefully inserted exclusive provisions in the APVAT Act 2005 to safeguard its money and issued necessary GOs and Memos and to comply the said GOs and Memo instructions of Government, the Commissioner of Commercial Taxes, issued several clarifications by time to time in this regard.

On perusal of the refund file of M/s K.L.Sreedhar Reddy Works Contractors, Nellore, it is found that the dealer has executed civil works for various Government Departments during the said period. The estimates prepared by the Contractee Government Department were obtained from the Engineering Departments.

Sl. No.	Name of the Department	Name of the work	Value of the work
1	RWS&S Division, Guntur	CPWS Shceme, Sattenappaly, Medikondure Mandals	Rs.850,00,000
2	RWS&S Circle, Mahabubnagar	CPWS Scheme, Achampet and others	Rs.600,00,000
3	RWS&S Circle, Mahabubnagar	Providing drinking water to 16 Habitations in Kollapur, Mahabubnagar	Rs.500,00,000
4	RWS&S Circle, Mahabubnagar	Providing drinking water facilities in Kothakota Mandal of Mahabubnagar district	Rs.575,00,000

The estimates prepared by the Contractee Government Department are found to be inclusive of taxes which are separately earmarked in the estimates which were also technically sanctioned by the departments concerned. The details of refunds are as under:

1. 2005-06 to 2008-09 (Refund Amount Rs.2,12,27,190/-)

Sl.No.	Year	Amount
1	2005-06	Rs.36,40,255/-
2	2006-07	Rs.41,22,247/-
3	2007-08	Rs.61,06,374/-
4	2008-09	Rs.73,58,314/-
	Total	Rs.2,12,27,190/-

The details of officers who were associated with the refunds of Rs.2,12,27,190/- for the period 2005-06 to 2008-09 are as under:

Sl.No.	Name & Designation of Officer	Duty performed
1	Sri J.V.M.Sarma, Assistant Commissioner (Commercial Taxes), VMU-I, Nellore division, Nellore	Determined excess but not forfeited.

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Thus, by the above mentioned Acts, by the Sri J.V.M.Sarma, the then Assistant Commissioner (Commercial Taxes), VMU-I, Nellore division and presently working as Deputy Commissioner (Commercial Taxes), O/o the Commissioner of Commercial Taxes, Andhra Pradesh, Vijayawada, while functioning as Assistant Commissioner, Nellore division has showed gross negligence while doing their official duty causing loss of revenue to the State exchequer, and in not obeying the Government orders and as well as instructions of the higher authorities and contravened Rule 3 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964.

Dr.MANMOHAN SINGH
SPECIAL CHIEF SECRETARY TO GOVERNMENT (CT, EXCISE & R&S) (FAC)

SECTION OFFICER

ANNEXURE – III

LIST OF DOCUMENTS BY WHICH ARTICLES OF CHARGES FRAMED AGAINST SRI J.V.M.SARMA, THE THEN ASSISTNT COMMISSIONER, NELLORE AND PRESENTLY DEPUTY COMMISSIONER (CT), OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES, A.P., VIJAYAWADA.

1) General Administration (V &E) department Vigilance Report No.13 (C.No.596/V&E/RI/2013), dt.30-1-2014.

Dr.MANMOHAN SINGH
SPECIAL CHIEF SECRETARY TO GOVERNMENT (CT, EXCISE & R&S) (FAC)

SECTION OFFICER

ANNEXURE – IV

LIST OF WITNESSES BY WHICH ARTICLES OF CHARGES FRAMED AGAINST SRI J.V.M.SARMA, THE THEN ASSISTNT COMMISSIONER, NELLORE AND PRESENTLY DEPUTY COMMISSIONER (CT), OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES, A.P., VIJAYAWADA.

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Dr.MANMOHAN SINGH
SPECIAL CHIEF SECRETARY TO GOVERNMENT (CT, EXCISE & R&S) (FAC)

SECTION OFFICER